IN THE HIGH COURT OF DELHI

CRL.M.C.No.4255/2006

# !	M.P.Goenka	.....	Petitioner

VERSUS

$ ^	Inspector, Custom	.....	Respondent

CRL.M.C.No.6404/2006

# !	Anil Jatia	.....	Petitioner

VERSUS

$ ^	Inspector, Custom	.....	Respondent

through: Mr. Rakesh Tikku, Advocate
for the petitioner
Mr. Satish Aggarwal, Advocate
for the respondent

% DATE OF DECISION: 21.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Petitioners are co-accused in a complaint filed by Sh. Chander Pal, Inspector Preventive Custom, New Delhi under Section 135 (1) (b) of the Customs Act 1962.

2. In a nut shell, gravement of the allegations in the complaint against the petitioners and other co-accused are that premises of M/s. Prakash Transport were searched which resulted

in seizure of imported fabric, in respect whereof documents of legal import were not available. Names surfaced of Annapoorna Textiles and Aaditya Trading Company the stated sole proprietory firms of Anil Jatia and Mahabir Prasad the petitioners of Crl. M.C.Nos. 4255/2006 and 6404/2006 respectively. It is alleged that out of 206 bails in the godown, 136 bails were accounted for under bill of entry 70 bails could not be accounted for. According to the complaint the goods in the godown were stated by the transporter to be belonging to Aaditya Trading Company. It was further stated that Annapoorna Textiles, the sole proprietory firm of Anil Jatia had acted as the purported importer.

3. Petitioners filed applications praying that they should be discharged for the reason in the adjudication proceedings, adjudication order dated 4.5.2000 passed by the Commissioner Custom of ordering confiscation of the seized goods was set aside by CEGAT vide order dated 2.7.2003.

4. Vide impugned order dated 24.4.2006 learned Trial Judge has held that in view of the latest pronouncement on the issue by the Supreme Court in Writ Petition (Criminal) No. 165/2004 *Standard Chartered Bank Vs. Directorate of Enforcement* decided on 24.2.2006, criminal proceedings had to be proceeded further.

5. Arguments of the petitioners before the learned MM was that since petitioners were discharged in the adjudication proceedings, on the same cause they could not be prosecuted

before a criminal court.

6. Learned counsel for the parties are not at variance with each other, namely that, it is permissible to proceed departmentally under the Customs Act if a violation is alleged and additionally to proceed under the penal law. However, the point of variance is, whereas petitioners state that if adjudicatory proceedings result in a discharge, criminal proceedings have to be dropped. Respondent urges that it is only when departmental proceedings have resulted in matter being dropped as evidence on record requires no confiscatory order to be passed would alone criminal proceedings be liable to be quashed for the reason, if on the same evidence a lower standard of proof has not been achieved, it would be an exercise in futility to continue with proceedings where a higher standard of proof has to be reached.

6. The decision of the Supreme Court in *Standard Chartered Bank*'s case was considered and interpreted by a learned Single Judge of this court in the decision reported as *Sunil Gulati Vs. R.K.Vohra* 2007 (1) JCC 220.

7. The learned Single Judge, after noticing various judgments referred to in *Standard Chartered Bank*'s case, opined that though seemingly there was a facial conflict in the different strands of reasoning, yet on deeper analysis, it was apparent that it was one thing to say that two proceedings could be maintained as a matter of law, but entirely another to say that after suffering an adjudication order on the same facts, the department or the

prosecuting agency ought not to be allowed to prosecute the accused having failed to establish the basic and necessary facts.

8. Suffice would it be to record that the issue is not about existence of a power to prosecute but is one relating to the foundational facts which would justify prosecution.

9. In *Sunil Gulati*'s case, legal position was summarized as under:-

> "In fact, various cases of the Supreme Court, not whereof is taken above, deal with different situations. The principles which can be culled out from the aforesaid judgments, when all these judgments are read out harmoniously, would be the following:
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> 1. On the same violation alleged against a person, if adjudication proceedings as well as criminal proceedings are permissible, both can be initiated simultaneously. For initiating criminal proceedings one does not have to wait for the outcome of the adjudication proceedings as the two proceedings are independent in nature.
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> 2. The findings in the departmental proceedings would not amount to res-judicata and initiation of criminal proceedings in these circumstances can be treated as double jeoparty as they are not in the nature of "prosecution".
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> 3. In case adjudication proceedings are decided against a person who is facing prosecution as well and the Tribunal has also upheld the findings of the adjudicators/assessing authority, that would have no bearing on the criminal proceedings and the criminal proceedings are to be determined on its own merits in accordance with law, uninhibited by the findings of the Tribunal. It is because of the reason that in so far as criminal action is concerned, it has to be proved as per the strict standards fixed for criminal cases before the criminal court by producing necessary evidence.
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> 4. In case converse situation namely where the accused persons are exonerated by the competent

> authorities/Tribunal in adjudication proceedings, one will have to see that reasons for such exoneration to determine whether these criminal proceedings could still continue. If the exoneration in departmental adjudication is on the technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have not bearing on criminal proceedings. If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned person(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue. The reason is obvious criminal complaint is filed by the departmental authorities alleging violation/contravention of the provisions of the Act on the part of the accused person. However, if the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the the accused persons with criminal liability when it is stated in the departmental proceedings that ex-facie there is no such violation. The yardstick would, therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned persons in the departmental proceedings is on merits holding that there is no contravention of the provisions of any act."

10. A perusal of the order passed by CEGAT setting aside the adjudication order reveals that the Tribunal has held that due to violation of principles of natural justice, order of confiscation could not be sustained. Thereafter, merits of the controversy has been considered. Learned counsel for the petitioner concedes that inextracibly linked in said discussion is the non-admissibility of certain evidence on the ground that it was procured behind the

back of the accused.

11. Unfortunately, the learned Metropolitan Magistrate has short circuited the issue by holding that in view of the decision of the Supreme Court in *Standard Chartered Bank*'s case, the complaint was maintainable.

12. Learned Metropolitan Magistrate failed to consider that the issue was not of the power to file a complaint, the issue was whether in view of the order passed by CEGAT, any useful purpose would be served in continuing with the criminal prosecution.

13. The learned Metropolitan Magistrate was thus obliged to refer to the material dealt with by the CEGAT and consider whether the complaint was predicated on the same material or whether the order passed by CEGAT dealt with the totality of the evidence and resulted in a clean discharge.

14. Since the learned Metropolitan Magistrate has not dealt with the issue as was required to be dealt with as per law, I quash the impugned order dated 24.4.2006 and restore the applications filed by the petitioners seeking discharge.

15. I direct the learned Metropolitan Magistrate to redecide the application seeking guidance from the decision of the learned Single Judge of this court in *Sunil Gupta*'s case (supra).

16. No costs.

August 21, 2007 **PRADEEP NANDRAJOG, J.**
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